Office-Supreme Court, U.S.
FILED
FEB 28 1983
ALEXANDER L. STEVAS,
CLERK

NO. 82-618

In The

Supreme Court of the United States

October Term, 1982

JOSEPH A. KOSAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOINT APPENDIX

JEFFREY L. NAFTULIN
90 North Main Street
Doylestown, PA 18901
(215) 348-5455

Counsel for Petitioner

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

Counsel for Respondent

PETITION FOR CERTIORARI FILED
SEPTEMBER 21, 1981.
CERTIORARI GRANTED JANUARY 10, 1982.

TABLE OF CONTENTS

	Page
Relevant Docket Entries	1
Joint Appendix A - Complaint	2
Joint Appendix B - Search Warrant . . .	12

The following are Appendixes attached to Petitioner's Petition For Writ Of Certiorari:
Opinion of the United States Court of Appeals For The Third Circuit (App.A)
Judgment of the Court of Appeals (App.B)
Denial of Petition For Rehearing by the Court of Appeals (App.C)
Order of the District Court (App.D)

RELEVANT DOCKET ENTRIES

May 15, 1981	Complaint filed by Petitioner.
August 10, 1981	Motion to Dismiss, or in the Alternative, for Summary Judgment filed by Respondent.
October 13, 1981	Motion to Dismiss granted by District Court.
October 23, 1981	Appeal filed to the United States Court Of Appeals For The Third Circuit.
May 19, 1982	Order of District Court granting Motion to Dismiss affirmed.
June 24, 1982	Petition for Rehearing denied.
September 21, 1982	Petition for Writ of Certiorari filed.
January 10, 1983	Certiorari granted.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH A. KOSAK, Plaintiff	:	CIVIL ACTION NO. 81-2054
-vs-	:	
UNITED STATES OF AMERICA, Defendant	:	

C O M P L A I N T

PLAINTIFF, JOSEPH A. KOSAK, Alleges:

1. This action is based upon the Federal Tort Claims Act, Act of June 25, 1948 62 Stat 982 (28 USC §§1346(b), 2671 et seq.).

2. Prior to instituting the present action, plaintiff submitted the claim which is the subject of this action to the Department of the Treasury, United States Customs Service. That agency finally denied the claim, in writing, on November 24, 1980, which denial was mailed to Plaintiff by certified mail, a copy of which is attached hereto and marked Exhibit "A".

3. The Plaintiff, Joseph A. Kosak, resided in the above entitled judicial district at the time the acts and ommissions herein complained of occurred and the acts and ommissions herein complained of occurred in the above entitled judicial district.

4. The Department of the Treasury, United States Customs Service is a governmental agency, acting for and in behalf of Defendant herein.

5. The Department of Justice, United States Attorneys office is a governmental agency, acting for and in behalf of the Defendant herein.

6. On or about February 28, 1978, agents and employees of the United States Customs Service entered the home of Joseph A. Kosak without his permission and took part of his collection of oriental objects of art and antiques, and also seized his personal papers.

7. On or about March 20, 1978, through efforts of employees of the United States Attorneys office and the United States Customs Service, the Plaintiff was charged with violating 18 U.S.C. §545 -- smuggling goods into the United States; 18 U.S.C. §2 -- aiding and abetting; and 18 U.S.C. §371 -- conspiring in regard to the items taken from his home.

8. On or about May 8, 1978, the Plaintiff was found not guilty by a jury of violating the aforementioned offenses after a lengthy trial in the United States District Court for the Eastern District of Pennsylvania.

9. On or about September 29, 1978, the United States Customs Service forwarded a "notice of penalty" to the Plaintiff informing him that his collection was being forfeited.

10. Plaintiff then filed a Petition to have his collection returned to him.

11. On June 1, 1979, the Plaintiff's collection of oriental artifacts was finally returned to him in damaged condition.

12. While the United States Customs Service retained the Plaintiff's property, the Defendant negligently, carelessly, wrecklessly and wrongfully damaged and destroyed the Plaintiff's property.

13. The specific items damaged and the specific loss of the Plaintiff are outlined as follows:

a. antique ivory tusk	$ 1,209.00
b. set of antique ivory carved three warriors	1,682.00
c. pair of antique ivory carved warriors on horseback	1,375.00
d. antique ivory Confucious standing and smiling	1,187.00
e. pair of black nephrite jade rabbits	184.00
f. nephrite jade statue of girl watering flowers	147.00

g.	nephrite jade incense burner	2,791.00
h.	nephrite jade vase with rings	848.00
i.	nephrite jade horse under tree	996.00
j.	serpentine stone girl with broom	148.00
k.	ginger jar with temple dog design	44.00
l.	pair of porcelain vases	64.00
m.	cork carving of pagoda	110.00
n.	four sets of mother of pearl pictures	285.00
o.	antique porcelain ginger jar	179.00
p.	antique ivory Kwan Yin with 18 arms	761.00

14. In addition, the Plaintiff incurred damages in the amount of $300.00 to repair his stereo receiver because the United States Customs Service refused to return the receipt for same so that the Plaintiff could use the warranty to have the same

repaired for nothing.

15. The negligent, intentional, careless, wreckless and wrongful acts of the Defendant in handling, transporting, storing and caring for the Plaintiff's property were the sole, direct, and proximate cause of the Plaintiff's injuries and of Plaintiff's damage in the amount of $12,310.00.

WHEREFORE, Plaintiff prays for judgment against Defendant:

1. for damages in the amount of $12,310.00;
2. for costs of suit;
3. for legal interest; and
4. for such other relief as the court may deem proper.

By: /s/ Jeffrey L. Naftulin

Jeffrey L. Naftulin
Attorney for Plaintiff
Attorney I.D. #18671

90 North Main Street
Fidelity Bank Building
Doylestown, PA 18901
(215) 348-5455

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

Baltimore, Maryland

Telephone (301) 962-4119 Nov 24 1980

REGISTERED MAIL - Refer To

RETURN RECEIPT REQUESTED FIS-3-RCL

Jeffrey L. Naftulin, Esquire
Fidelity Bank Building
90 North Main Street
Philadelphia, Pennsylvania 18901

Dear Mr. Naftulin:

This is in reference to the claim of your client, Joseph Kosak, filed under the Federal Tort Claims Act, for alleged damage to antique oriental articles, which were seized from his residence on February 28, 1978, by U. S. Customs Service Special Agents.

An investigation was conducted to determine the facts and circumstances of this claim. Our investigation disclosed the following. On February 28, 1978, in

conjunction with a search warrant, 223 items were seized by U. S. Customs from the residence of Joseph Kosak for violation of 19 USC 1592. On May 8, 1978, Mr. Kosak was found not guilty of the violation by a jury trial in the U.S. District Court for the Eastern District of Pennsylvania. It was also disclosed that Mr. Kosak had previously filed a claim with the U. S. Navy for some of the same items he claimed was damaged by Customs agents. Lt. Commander Kusiak, Personnel Claims Officer, Philadelphia Navy Yard, advised that Mr. Kosak's claim with the Navy was settled in January 1978 (before Customs seizure) in the amount of $4500.00.

The Federal Tort Claims Act grants to the head of each Federal agency or his designee authority, with certain exceptions, to consider and settle administratively claims for property damage or personal injury caused by the negligent or wrongful act or

omission of an employee of the Government while acting within the scope of his employment. However, we are without authority to consider your client's claim on its merits under the Federal Tort Claims Act. This is because the claim falls within one of the exceptions to the Act, specifically 28 USC 2680(c), which exempts from coverage by the Act "any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of Customs...." Since your client alleges that the merchandise was damaged while under Customs seizure, the claim falls within that exception. Accordingly, we are required to deny your client's claim. Under the governing regulations, we must advise you on behalf of your client that if he is dissatisfied with this decision he has the right to file suit in an appropriate

United States district court not later than 6 months from the date of mailing of this notification.

Sincerely yours,

/s/ John A. Hurley

John A. Hurley

Regional Commissioner

Exhibit "A"
11

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA Docket No.

VS. 78

A two story, reddish-brown brick townshouse with brown trimmings located at Regency Woods Townhouse Apts., Townhouse/Apt. K-3, being part of Complex K, at old Dublin Pike, Doylestown, Pennsylvania

Case No. 166M SEARCH WARRANT

To Francis X. Dufner, Special Agent, United States Customs Service, or any other authorized agent:

Affidavit(s) having been made before me by Special Agent Francis X. Dufner, United States Customs Service.

that he has reason to believe that on the premises known as A two story, reddish-brown brick townhouse with brown trimmings located at Regency Woods Townshouse Apts.,

Townhouse/Apt. K-3, being part of Complex K, at Old Dublin Pike, Doylestown, Pennsylvania.

in the Eastern District of Pennsylvania there is now being concealed certain property, namely statues, carvings, fruit pieces, pictures, vases, jars, stone trees and flowers, made of jade, nephrite, serpentine, quartz, amethyst, melachite, ivory, mother of pearl, cloisonne, porcelain, tsingtien, longevity, tibet, soap, and cork which are more particularly described in Exhibits "A" and "C" which are attached hereto and made a part hereof and all invoices, entry documents, waybills, cancelled checks, ledgers, certificates of origin and authenticity and correspondence which are evidence of entry of goods by means of false statements in violation of Title 18, U.S.C. Section 542, and smuggling goods into the United States in violation of Title 18, U.S.C. Section 545.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of _____ (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search

in the daytime (6:00 a.m. to 10:00 p.m.)

at any time in the day or night

and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before Hon. Peter B. Sciderі as required by law.

Dated this day of FEB 28 1978, 1978.

/s/ Peter B. Scuderi

Hon. Peter B. Scuderi